

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





75-2096

To be argued by  
JANE E. BLOOM

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RODNEY R. HAYMES, individually and on  
behalf of all other inmates similarly  
situated,

Plaintiff-Appellee,

-against-

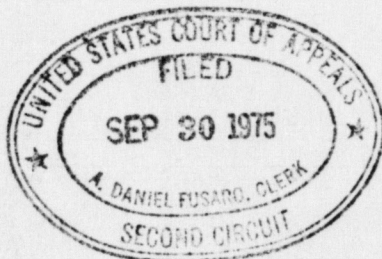
No. 75-2096

PAUL J. REGAN, Chairman of New York  
State Board of Parole; Parole Board  
Panel of 7/29/74,

Defendants-Appellants.

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BRIEF FOR PLAINTIFF-APPELLEE



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RODNEY R. HAYMES, individually and on  
behalf of all other inmates similarly  
situated,

Plaintiff-Appellee,

-against-

No. 75-2096

PAUL J. REGAN, Chairman of New York  
State Board of Parole; Parole Board  
Panel of 7/29/74,

Defendants-Appellents.

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QUESTION PRESENTED

Does due process require the New York  
State Parole Board to provide an inmate  
denied parole with a written statement  
of the release criteria observed by the  
Parole Board and the factors considered  
by the Board in determining whether those  
criteria were met by the inmate?

STATEMENT OF THE CASE

This is an appeal from an order of the United States District Court for the Southern District of New York (Knapp, J.) dated May 27, 1975 which granted appellee's motion for a preliminary injunction requiring the appellants to furnish appellee with (1) a statement of the ground of their decision of July 29, 1974 denying him release from imprisonment on parole and the essential facts upon which their decision was based and (2) a statement of the release criteria observed by them on July 29, 1974 and the factors considered by them in determining whether these criteria were met with respect to him.

This civil rights action, brought pursuant to 42 U.S.C. § 1983, was commenced in District Court when plaintiff filed a pro se class action complaint dated September 3, 1974. The complaint charged that plaintiff was deprived of his rights under New York Correction Law Section 212 and the Fourteenth Amendment to the United States Constitution because of the defendants' failure to comply with the procedures set forth in New York Correction Law Section 212 and to provide him with meaningful written notice of the reasons for his denial of parole (28a-29a)<sup>1</sup>. On

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<sup>1</sup> Numbers in parentheses followed by "a" refer to pages of the appendix.



December 20, 1974, defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. (31a)

On April 2, 1975, plaintiff's attorney filed an amended complaint class action requesting, in part<sup>2</sup>, declaratory relief and an injunction ordering the defendants to provide inmates<sup>3</sup> with "adequate written notice of the reasons for their denial of parole in compliance with the Due Process Clause of the Fourteenth Amendment of the United States Constitution and New York Correction Law Section 213. (48a) On April 3, 1975, plaintiff filed a motion for preliminary injunction and class relief. (55a) In a Memorandum dated May 6, 1975 and an order dated May 27, 1975, the District Court granted a preliminary injunction requiring the defendants to furnish plaintiff with (1) a statement of the ground of their decision of July 29, 1974 denying him release from imprisonment on parole and the essential facts upon which their decision was based and (2) a statement of the release criteria observed by them in determining whether these criteria were met with respect to the plaintiff. (4a) On June 9, 1975, defendants filed a motion to modify and stay

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Plaintiff also requested declaratory and injunctive relief ordering the defendants to conduct parole release hearings in accordance with the requirements set forth in New York Correction Law Sections 212, 213 and 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. An evidentiary hearing on these issues was held in May, 1975. A decision has not yet been rendered.

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A decision regarding class relief has not yet been rendered.

(66a) the District Court order dated May 27, 1975. In a memorandum endorsement dated July 2, 1975, the District Court, (Knapp, J.) denied defendants' motion to modify and stay his order. On September 2, 1975, a panel of this Court granted defendants-appellants' application for a stay of the District Court's order pending appeal.

#### STATEMENT OF FACTS

Appellant is currently incarcerated in the Attica Correctional Facility, Attica, New York pursuant to a judgment of conviction of the crime of manslaughter in the first degree rendered by the Erie County Court (Heffron, J.) after a trial by jury.

In June, 1972, appellant appeared before the State Board of Parole at Attica Correctional Facility for the setting of the minimum period of imprisonment pursuant to New York Correction Law Section 212(2-a). On July 29, 1974, appellant appeared before a three member panel of the appellant State Board of Parole at Greenhaven Correctional Facility at the expiration of the minimum period pursuant to New York Correction Law Section 212(3). On or about July 30, 1974, appellant was sent a written parole denial slip stating "Held to 7/75 board with improved record."



On or about July 15, 1975, appellant appeared before a three member panel of the appellant State Board of Parole at Attica Correctional Facility. On or about July 15, 1975, appellant received a written parole denial slip stating, "Held 9 Months for improved record". (See Exhibit #1)

#### ARGUMENT

##### I. THE DISTRICT COURT PROPERLY FOUND THAT DUE PROCESS ATTACHES TO PAROLE RELEASE HEARINGS.

Appellee contends that the District Court properly concluded that the Due Process Clause of the Fourteenth Amendment applies to parole release hearings conducted by the appellant New York State Parole Board. In Morrissey v. Brewer, 408 U.S. 471 (1972), the Supreme Court held due process to apply to parole revocation proceedings and noted:

"Whether any procedural protections are due depends on the extent to which an individual will be 'condemned to suffer a grievous loss'. The question is not merely the 'weight' of the individual's interest but whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment. (citations omitted) Id. at 481.

Analyzing the Morrissey decision in United States ex rel. Johnson v. Chairman New York State Board of Parole, 500 F. 2d 925 (2d Cir. 1974), vacated as moot, 419 U.S. 1015 (1975), the Second Circuit

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The appellants do not seem to reach the question of whether or not the Due Process Clause of the Fourteenth Amendment should apply to parole release hearings.

held that due process must govern parole release proceedings:

"Parole was thenceforth [after Morrissey] to be treated as a 'conditional liberty', representing an 'interest' entitled to due process protection. A prisoner's interest in prospective parole, or 'conditional entitlement', must be treated in a like fashion. To hold otherwise would be to create a distinction too gossamer - thin to stand close analysis. Whether the immediate issue be release or revocation, the stakes are the same: conditional freedom versus incarceration." Id. at 928.

In Childs v. United States Board of Parole, 511 F. 2d 1270 (D.C. Cir. 1974) the court held that because an inmate denied parole suffered a "grievous loss"; the inmate was entitled to due process protections.

"The Board holds the key to the lock of the prison. It possesses the power to grant or to deny conditional liberty . . . . If the Board's decision is negative, the prisoner is deprived of conditional liberty. The result of the Board's exercise of its discretion is that an applicant either suffers a 'grievous loss' or gains a conditional liberty. His interest accordingly is substantial. We think it follows that the parole decision must be guided by minimal standards of due process of law which at the same time reflect the need of the parole system to function consistently with its purposes and responsibilities." Id. at 1278.



In Candarini v. Attorney General of United States, 369 F. Supp. 1132 (E.D.N.Y. 1974), the court noted at 1136: "To the inmate, a negative decision from the Board surely condemns him to suffer a grievous loss. The inmate's interest in conditional liberty requires that minimum due process attach." See also Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring); Goldberg v. Kelly, 397 U.S. 254, 263 (1970); Wolff v. McDonnell, 418 U.S. 539, 556-558 (1974); Bradford v. Weinstein, \_\_\_\_\_ F. 2d \_\_\_\_\_ (4th Cir. 11-22-74), cert. granted, \_\_\_\_\_ U.S. \_\_\_\_\_ 43 U.S.L.W. 3636 (June 2, 1975).

Rather than being an ad hoc exercise of clemency, release on parole is an established legislative variation on imprisonment. New York Correction Law Sections 212, 213, and 214. Even when a person's liberty is a statutory creation of the state, it is protected against the arbitrary action of government. Wolff v. McDonnell, supra at 558. Thus, even one who "lacks a '[constitutional] right' to a governmental gratuity may nevertheless have a 'right' to fair treatment in the distribution of the gratuity." Davis, Administrative Law Text, 177 (3rd ed. 1971).

The application of due process to the parole release proceedings is constitutionally required.

II. THE DISTRICT COURT PROPERLY FOUND THAT DUE PROCESS REQUIRES THAT AN INMATE DENIED PAROLE BE PROVIDED WITH A WRITTEN STATEMENT OF THE RELEASE CRITERIA OBSERVED BY THE PAROLE BOARD AND THE FACTORS CONSIDERED IN DETERMINING WHETHER THE CRITERIA WERE MET.

The specific requirements of due process in parole release hearings must be determined by balancing the interests of the inmate and the state. As stated by this court in Johnson, supra at 928;

. . . due process is a flexible concept which may vary in different contexts, depending upon a complexity of factors, including [t]he nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding... [citations omitted]

The court in Wolff v. McDonnell, supra at 558 noted;

[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental action.

Appellee maintains that the District Court correctly applied this Court's decision in Johnson, supra, in finding that due process requires the Parole Board to provide an inmate denied parole with:

1. A written statement of the ground of its decision and the essential facts upon which the decision was based and,



2. A statement of the release criteria observed by it and the factors considered by it in determining whether those criteria were met with respect to a particular inmate.

The inmate's interest in knowing the reasons for his denial of parole and the criteria utilized by the Parole Board in making this decision certainly outweigh any burdens on the state in disclosing this information. The purpose of providing a parolee with a written statement of reason and criteria is twofold: (1) to inform the individual of the nature of his violation so that he can conform his behavior to the criteria in the future; (2) to assure that the fact finders have complied with due process, applied permissible criteria, considered relevant factors and acted rationally. Appellants argue that it would be burdensome for them to divulge their release criteria. However appellants fail to disclose why this would be burdensome. Appellee maintains that any possible burdens are outweighed by the inmate's need and due process right to know the release criteria utilized by the appellants.

Many cases cited by the District Court and by this Court in Johnson, supra hold that the parole board must, in addition to a statement of reasons, provide an inmate with a statement of its release criteria and the factors considered by it in deciding whether these criteria were met.

This Court in Johnson, supra, noted at 930 that:

"the prisoner, the community and a reviewing court are left in the dark as to whether it applied permissible criteria, considered relevant factors and acted rationally rather than pursuant to whim and caprice in any given case" unless the Parole Board

"(1) discloses the release criteria observed by it and the factors considered by it in determining whether these criteria are met, and

(2) states the grounds for denial of parole in each case where it is denied. . ."

While the court in Johnson, supra, did not require the Parole Board to formulate and publish general rules and criteria regarding the grant and denial of parole, the court assumed that a statement of written reasons would contain criteria utilized by the Board in reaching its decision. The court stated at 929:

". . . a statement of reasons will permit the reviewing court to determine whether the Board has adopted and followed criteria that are appropriate, rational and consistent, and also protects the inmate against arbitrary and capricious decisions or actions based upon impermissible considerations."

The court noted at 929-930 that

"The broad powers vested by statute in the Board do not relieve it from the duty of observing meaningful criteria for determining in each case when a prisoner's release 'is



not incompatible with the welfare of society'. The very scope of this sweeping term demands that relevant factors and limits be established and observed by the Board in deciding whether to grant or deny parole.

In Childs v. United States Board of Parole, 511 F. 2d 1270, 1272 (D.C. Cir. 1974) the court affirmed a District Court order requiring the United States Parole Board to provide a written statement of reasons to inmates denied parole and to

"...submit to the court within 60 days proposed procedures for conveying to prisoners reasonably comprehensive explanatory guidance as to the criteria to be considered in passing upon applications for parole."

In Cooley v. Sigler 381 F. Supp. 441 (D. Minn. 1974) the court held at 442 that due process requires that inmates denied parole receive a written statement of "the grounds for the decision...and the essential facts upon which the Board's inferences are based". The court also decided at 444:

"...that due process requires that the Board give applicants access to the criteria and guidelines used in reviewing parole applications...This mandate may be accomplished by posting the Board's applicable regulations in the Federal Correctional Institution at Sandstone, Minnesota, in a place or places where the inmates will have access to them."

In Craft v. Attorney General of the United States, 379 F.Supp. 538 (M.D. Pa. 1974) a federal prisoner was denied parole and provided with the written statement that "release at this time would depreciate the seriousness of the crime and is thus incompatible with the welfare of society". Id. at 539. The prisoner contended that the Board used impermissible criteria in its decision. The court ordered a rehearing and noted at 540:

"Because of the manner in which petitioner's denial of parole was presented, the Court is in no position to assess the merits of these contentions. The reason given Petitioner for denial of his application for parole was tantamount to no reason...It is impossible for this Court to ascertain what criteria the Board used and what factors it considered."

The court noted at 540 that this Court in Johnson, supra, required that potential parolees be given:

"(1) a statement of the release criteria observed by the Board and the factors considered by it in determining whether these criteria are met and (2) a statement of the grounds for denial of parole where it is denied."

The court noted that these requirements served the purpose of

"...protecting the inmate against arbitrary decision-making while affording the reviewing court an adequate opportunity to ascertain whether the Board used permissible criteria, considered relevant factors and acted non-arbitrarily..." Id. at 539-540.



In Candarini v. Attorney General of the United States, 369 F. Supp. 1132, 1137 (E.D.N.Y. 1974), the court required the United States Board of Parole to:

"...set forth sufficient facts and reasons to enable a reviewing court to ascertain whether an abuse of discretion has been committed and to enable the inmate to know why he has been denied parole and what he can do to better regulate his future conduct."

Many commentators agree that the Parole Board must provide an inmate with its release criteria and the factors considered by the Parole Board in deciding whether these criteria were met. In the New York State Special Commission on Attica, Official Report (Praeger Publishers, 1972) the Commission suggested that the Parole Board reveal its release criteria to New York State inmates. The Commission stated at xviii:

"Parole is the principal method by which most inmates leave prison. But, as presently operated, parole procedures are unfair, and appear to inmates to be even more inequitable and irrational than they are. For a correctional system to satisfy the principles here enumerated, the grant or denial of parole must be measured by clear and comprehensible standards disseminated to inmates in advance. The inmate must be told promptly if he has been granted parole and, if not, exactly why not." (emphasis added)

Alvin J. Bronstein, executive director of the ACCU's National Prison Project, has stated that parole boards should "...develop specific, comprehensive standards to guide their decisions... (and)...state the findings in each parole decision, and give the reasons to deny or grant parole on the basis of a policy determination that may have value as a precedent..." "Rules for Playing God", The Civil Liberties Review 120, Summer, 1974.

In a critical discussion of the "Guidelines for Decision-making" adopted by the United State Parole Board (40 Fed. Reg. 5357 (February 5, 1975)), it has been stated that, "Despite serious flaws, the United State Parole Board's efforts to make explicit the criteria and priorities in its decisionmaking are a significant step that should spurn legislatures and courts into more rational attempts to achieve the aims of the criminal justice system. Project: Parole Decisionmaking and the Sentencing Process, 84 Yale L. J. 870, 900 (1975).

The experience of the United States Parole Board in the development and implementation of release criteria for parole release hearings is instructive in a consideration of due process requirements. In September 1973, the Board adopted release criteria to guide decisionmaking in parole release hearings. See 38 Fed. Reg. 26652-57 (September 27, 1973). As stated in the



most recent revision of the guidelines, 40 Fed. Reg. 5358 (February 5, 1975), the purpose of the guidelines is

"(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration."

It is significant to note that the Board formulated and adopted these release criteria, in part, in response to the District Court's order in Childs v. United States Board of Parole, 371 F. Supp. 1246 (D.C. 1973) that the Board submit "proposed procedures for conveying to prisoners reasonably comprehensive explanatory guidance as to the criteria to be considered in passing upon application for parole". Id. at 1247, 48. The Board did not appeal from this aspect of the District Court's order and the Circuit Court 511 F. 2d 1270 (D.C. Cir. 1974) noted at 1273 that the Board did promulgate and implement guidelines.

In its guidelines, the Board has set forth the general factors it considers in making parole release decisions. 28 C.F.R. 2.19 (See Exhibit #2) General factors include sentence date, present offense, prior criminal record, changes in motivation and behavior, personal and social history, results of scientific data and tools,

paroling policy guidelines as set forth in §2.20, and comments by hearing examiners. The most recent revision of the guidelines in §2.20 is found in 40 Fed. Reg. 5358-5361 (February 5, 1975). (See Exhibit #3.) The Guideline Table consists of two indexes on which inmates are served: an "Offense Security" index, and a "Salient Factor" index. As stated in Project: Parole Release, supra at 823:

The Offense Security Scale was derived by averaging the evaluations of Parole Board members and examiners of the seriousness, on a scale of one through six, of typical offense behaviors. The Offense Severity Rating reflects the Parole Board's independent, subjective evaluation of the granting of the inmate's past criminal behavior.

The "Salient Factor" Scale, found at 40 Fed. Reg. 5361, attempts to predict the likelihood that an inmate will succeed on parole. It is noted in Project: Parole Release, supra at 826, that the Guidelines Table represents a major departure from previous parole release decision-making because "It establishes explicit criteria which, in most cases, determine the parole release date."

Because these guidelines have been established by the United States Parole Board, the question of the establishment of release criteria is usually not litigated in federal court. While the appellants argue that most cases cited by the District Court hold that a Parole Board is required to provide an inmate denied parole with a statement of reasons for the denial and not a



statement of release criteria, a closer examination of the United States Parole Board cases referred to by the appellants in their brief at 28 reveals that the appellants' argument lacks merit. The courts usually refer approvingly to the existing release criteria adopted by the Board.

In King v. United States, 492 F. 2d 1337 (7th Cir. 1974), the Court held that the Administrative Procedure Act required the United States Board of Parole to give written reasons for the denial of parole. The court did not consider the issue of release criteria as the Board had already formulated and published such criteria. The court noted at 1341 fn.14 that "The Board has published a list of 27 unweighted factors which guide its decision whether to grant or deny parole." The court also noted at 1341 fn. 12 that when reasons are given;

"... the reasons must be reasonably specific. It does no good to tell a prisoner he is being denied parole because he is a danger to society unless he is told why he is so regarded, and whether there is anything he can do to convince the Board otherwise." (citations omitted)

In Lupo v. Norton, 371 F. Supp. 156 (D. Conn. 1974), the court reviewed a parole denial decision made by the United States Parole Board and decided that the written statement had to refer to the release guidelines utilized by the Board. The court commented on the new guidelines adopted by the Board and stated at 161:

"By making its table of guidelines known to prisoners and by requiring reasons for denial of parole, the Board has adopted procedures well designed to reduce the risks that parole will be denied based on totally unfounded charges."

In Wiley v. United States Board of Parole, 380 F. Supp. 1194 (M.D. Pa. 1974) a federal inmate challenged the legality of the federal parole guidelines. The court held at 1197 that the "...Board's published guidelines for parole decision-making are consistent with the general statutory criteria for parole embodied in 18 U.S.C.A. § 4202, 4203 and hence are valid".

In Johnson v. Heggie, 362 F. Supp. 851 (D. Colo. 1973), where inmates requested a written statement of reasons for the denial of parole, the court dismissed the complaint/<sup>as</sup>moot because the Board promulgated on February 26, 1973 Rules and Regulations requiring written statements of reasons for parole denials. This case was decided July 13, 1973, three months before the Board promulgated release guidelines in October, 1973.

In Mower v. Britton, 504 F. 2d 396 (10th Cir. 1974), the court considered due process requirements in parole release hearings. The court did not consider the question of release criteria as the United States Parole Board had already promulgated release criteria. The court did note at 399:



"A statement of reasons may promote, as well, the rehabilitative goals of the parole system, since informing the prisoner of the reasons for denying his parole is an obvious first step toward enabling him to conform his institutional conduct to proper standards, should such issue be before the Board."

In Mitchell v. Sigler, 389 F. Supp. 1012 (N.D. Ga. 1975), the court again did not consider release criteria because the Parole Board criteria had been promulgated. The court noted at 1019:

"...the reasons must be reasonably specific. It does no good to tell a prisoner he is being denied parole because he is a danger to society unless he is told why he is so regarded, and whether there is anything he can do to convince the Board otherwise."

Appellee maintains that his interest in knowing the standards utilized by appellants in determining whether or not he is to be released from incarceration outweighs any burdens the appellants might have in formulating and disclosing these criteria. Minimal standards of due process require that the appellants provide appellee with a statement of its release criteria and the factors considered by it in deciding whether these criteria were met.

CONCLUSION

For the above-stated reasons, the order of the District Court should be affirmed.

Respectfully submitted,

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DATED: Poughkeepsie, New York  
September 26, 1975



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STATE OF NEW YORK-DEPARTMENT OF CORRECTIONAL SERVICES

PAROLE BOARD DECISION NOTICE

Name Rodney Haymes

Institution Attica Corr. Facility

Number 27387

Date JUL 15 1975

The Board of Parole at the July 1975 meeting rendered the following decision

Held 9 Months for improved record  
4/76 Board

[Signature]  
Parole Officer

be submitted to the five Regional Directors. The Regional Directors shall make the original decision by a majority vote.

(b) The following criteria will be used in designating cases for the original jurisdiction of the Regional Directors:

(1) *National security.* Prisoners who have committed serious crimes against the security of the nation, e.g., espionage or aggravated subversive activity.

(2) *Organized crime.* Persons who the Regional Director has reason to believe may have been professional criminals or may have played a significant role in an organized criminal activity.

(3) *National or unusual interest.* Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

#### § 2.18 Granting of parole.

The granting of parole rests in the discretion of the Board of Parole. The Board may parole a prisoner who is otherwise eligible if (a) in the opinion of the Board such release is not incompatible with the welfare of society; (b) he has observed substantially the rules of the institution in which he is confined; and (c) there is a reasonable probability that he will live and remain at liberty without violating the laws (18 U.S.C. 4203(a)).

#### § 2.19 Consideration by the Board.

In the exercise of its discretion, the Board generally considers some or all of the following factors and such others as it may deem appropriate:

(a) Sentence data:

(1) Type of sentence;

(2) Length of sentence;

(3) Recommendations of judge, U.S. Attorney, and other responsible officials.

(b) Present offense:

(1) Facts and circumstances of the offense;

(2) Mitigating and aggravating factors;

(3) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any.

(c) Prior criminal record:

(1) Nature and pattern of offenses;

(2) Adjustment to previous probation, parole, and confinement;

(3) Detainers.

(d) Changes in motivation and behavior:

(1) Changes in attitude toward self and others;

(2) Reasons underlying changes;

(3) Personal goals and description of personal strength or resources available to maintain motivation for law abiding behavior.

(e) Personal and social history:

(1) Family and marital history;

(2) Intelligence and education;

(3) Employment and military experience;

(4) Physical and emotional health.

(f) Institutional experience:

(1) Program goals and accomplishments;

(i) Academic;

(ii) Vocational education, training or work assignments;

(iii) Therapy.

(2) General adjustment:

(i) Inter-personal relationships with staff and inmates;

(ii) Behavior, including misconduct.

(g) Community resources, including release plans:

(1) Residence; live alone, with family or others;

(2) Employment, training, or academic education;

(3) Special needs and resources to meet them.

(h) Results of scientific data and tools:

(1) Psychological tests and evaluations;

(2) Statistical parole experience tables (salient factor score).

(i) Paroling policy guidelines as set forth in § 2.20;

(j) Comments by hearing examiners; evaluative comments supporting a decision, including impressions gained from the hearing.

#### § 2.20 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole

prognosis) character ranges specified by established specific good institutional program progress.

(c) These time guidelines. When warrant, decision lines (either above rendered. For exceptionally good achievement may earlier release.

(d) The guideline of offense behavior level. However, espe

Adult guidelines for de

Offense characteristic

Low

Immigration law violation

Minor theft (includes less than \$1,000)

Walkaway

Low moderate

Alcohol law violations

Counterfeit currency (p

Drugs: Marijuana, poss

Firearms Act, possess

machinegun

Forgery/fraud (less than

Income tax evasion (less

Selective Service Act vi

Theft from mail (less than

Moderate

Bribery of public official

Counterfeit currency (p

Drugs:

"Hard drugs," poss

Marijuana, possession

Marijuana, sale (less

"Soft drugs," poss

"Soft drugs," sale

Embezzlement (less than

Explosives, possession

Firearms Act, possession

gun(s), or multiple re

Income tax evasion (less

Interstate transportation

Mailing threatening

Misprison of felony

Receiving stolen property

Smuggling of aliens

Theft, forgery/fraud (less

Theft of motor vehicle

High

Burglary or larceny (of

Counterfeit currency

Counterfeiting (manuf

Drugs:

"Hard drugs," poss

"Hard drugs," sale

Marijuana, sale (\$5,000

"Soft drugs," poss

"Soft drugs," sale (\$5,000

Embezzlement (\$20,000-

Interstate transportation

Mann Act (no force—con

Organized vehicle theft

Receiving stolen property

Robbery and weapon of

Theft, forgery/fraud (\$20



(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (A) involved an unusual degree of sophistication or planning or (B) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial or prisoner status, or because of the community status of the offender or his victim.

(4) Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

Section 2.20 is revised to read as follows:

**§ 2.20 Paroling policy guidelines; statement of general policy.**

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Board of Parole has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for the cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered. For example, cases with exceptionally good institutional program achievement may be considered for earlier release.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) These guidelines do not apply to parole revocation or reparole considerations. The Board shall review the guidelines periodically and may revise or modify them at any time as deemed appropriate.

# **RULES AND REGULATIONS**

## **ADULT**

Offense description (severity of offense behavior specified)		Range of recommended parole program (months, years, etc.)			
		Very good (A-1)	Good (B-1)	Fair (C-1)	Poor (D-1)
<b>Low</b>					
Immigration law violations		4 to 12 mo.	12 to 24 mo.	24 to 36 mo.	36 to 48 mo.
Minor theft (larceny) and other possession of stolen property less than \$1,000		4 to 12 mo.	12 to 24 mo.	24 to 36 mo.	36 to 48 mo.
Wellaway		4 to 12 mo.	12 to 24 mo.	24 to 36 mo.	36 to 48 mo.
<b>Low Moderate</b>					
Attained law violations		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Counterfeit currency (passing/possession less than \$1,000)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Drug offenses (possession of controlled substances)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Firearm Act, possession/purchase (single weapon—not altered or modified)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Forgery/fraud (less than \$1,000)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Income tax evasion (less than \$10,000)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Selective Service Act violations		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
Theft from mail (less than \$1,000)		12 to 24 mo.	24 to 36 mo.	36 to 48 mo.	48 to 60 mo.
<b>Moderate</b>					
Robbery of public officials		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Counterfeit currency (passing/possession \$1,000 to \$10,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Drugs:					
"Hard drugs" (possession by drug user less than \$500)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Marijuana, possession with intent to distribute (less than \$5,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
"Soft drugs" (possession less than \$5,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
"Soft drugs" (sale less than \$500)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Embezzlement (less than \$20,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Explosives, possession/transportation		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Firearm Act, possession/purchase (altered weapon), machinegun, or multiple weapons		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Income tax evasion (\$10,000 to \$20,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Interstate transportation of stolen/forged securities (less than \$20,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Mailing threatening communications		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Misprision of felony		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Receiving stolen property with intent to sell (less than \$20,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Smuggling of aliens		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Theft/forgery/fraud (\$1,000 to \$10,000)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
Theft of motor vehicle (not multiple theft or for resale)		24 to 36 mo.	36 to 48 mo.	48 to 60 mo.	60 to 72 mo.
<b>High</b>					
Burglary or larceny (other than embezzlement) from bank or post office		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Counterfeit currency (passing/possession \$20,000 or more)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Counterfeiting (manufacturing)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Drugs:					
"Hard drugs" (possession with intent to distribute/sale) by drug user to support own habit only		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Marijuana, possession with intent to distribute (\$5,000 or more)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
"Soft drugs" (possession with intent to distribute/sale) (\$5,000 to \$20,000)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Embezzlement (\$20,000 to \$100,000)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Interstate transportation of stolen/forged securities (\$20,000 to \$100,000)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Mann Act (no force—commercial purposes)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Organized vehicle theft		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Receiving stolen property (\$20,000 to \$100,000)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
Theft/forgery/fraud (\$20,000 to \$100,000)		36 to 48 mo.	48 to 60 mo.	60 to 72 mo.	72 to 84 mo.
<b>Very High</b>					
Robbery (weapon or threat)		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
Drugs:					
"Hard drugs" (possession with intent to distribute/sale) for profit (no prior conviction for sale of "hard drugs")		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
"Soft drugs" (possession with intent to distribute/sale) (over \$5,000)		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
Extortion		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
Mann Act (force)		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
Sexual act (force)		48 to 60 mo.	60 to 72 mo.	72 to 84 mo.	84 to 96 mo.
<b>Greatest</b>					
Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Aircraft hijacking		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Drugs: "Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs")		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Espionage		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Explosives (detonation)		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Kidnapping		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.
Willful homicide		60 to 72 mo.	72 to 84 mo.	84 to 96 mo.	96 to 108 mo.

## **NOTES**

- These guidelines are predicated upon good institutions' conduct and program performance.
- If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
- If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
- If an offense behavior involved multiple separate offenses, the severity level may be increased.
- If a continuance is to be given, allow 30 d (1 mo) for release program provision.
- "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

# RULES AND REGULATIONS

5359

## YOUTH

[Guidelines for decisionmaking, average total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)						
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)			
LOW							
Emigration law violations.....	6 to 10 mo.....	8 to 12 mo.....	10 to 14 mo.....	12 to 16 mo.			
Minor theft (includes larceny and simple possession of stolen property less than \$1,000).							
Walkaway.....							
LOW MODERATE							
Alcohol law violations.....	8 to 12 mo.....	12 to 16 mo.....	16 to 20 mo.....	20 to 25 mo.			
Counterfeit currency (passing/possession less than \$1,000).							
Drugs: marijuana, simple possession (less than \$500).							
Firearms Act, possession/purchase/sale (single weapon—not altered or machinegun).							
Forgery/fraud (less than \$1,000).....							
Income tax evasion (less than \$10,000).....							
Selective Service Act violations.....							
Theft from mail (less than \$1,000).....							
MODERATE							
Bribery of public officials.....	9 to 13 mo.....	13 to 17 mo.....	17 to 21 mo.....	21 to 26 mo.			
Counterfeit currency (passing/possession \$1,000 to \$19,999).							
Drugs:							
“Hard drugs”, possession by drug user (less than \$500).							
Marijuana, possession with intent to distrib- ute/sale (less than \$5,000).							
“Soft drugs”, possession (less than \$5,000).....							
“Soft drugs”, sale (less than \$500).....							
Embezzlement (less than \$20,000).....							
Explosives, possession/transportation.....							
Firearms Act, possession/purchase/sale (altered weapon(s), machinegun(s), or multiple weapons).							
Income tax evasion (\$10,000 to \$50,000).....							
Interstate transportation of stolen/forged securities (less than \$20,000).							
Mailing threatening communications.....							
Misprision of felony.....							
Receiving stolen property with intent to resell (less than \$20,000).							
Smuggler of aliens.....							
Theft/forgery/fraud (\$1,000 to \$19,999).....							
Theft of motor vehicle (not multiple theft or for resale).							
HIGH							
Burglary or larceny (other than embezzlement) from bank or post office.	12 to 16 mo.....	16 to 20 mo.....	20 to 24 mo.....	24 to 28 mo.			
Counterfeit currency (passing/possession \$20,000 or more).							
Counterfeiting (manufacturing).....							
Drugs:							
“Hard drugs” (possession with intent to distrib- ute/sale) by drug user to support own habit only.							
Marijuana, possession with intent to distrib- ute/sale (\$5,000 or more).							
“Soft drugs”, possession with intent to distrib- ute/sale (\$500 to \$5,000).....							
“Soft drugs”, sale (\$500 to \$5,000).....							
Embezzlement (\$20,000 to \$100,000).....							
Interstate transportation of stolen/forged securities (\$20,000 to \$100,000).							
Mann Act (no force—commercial purposes).....							
Organized vehicle theft.....							
Receiving stolen property (\$20,000 to \$100,000).....							
Theft/forgery/fraud (\$20,000 to \$100,000).....							
VERY HIGH							
Robbery (weapon or threat).....	20 to 27 mo.....	27 to 32 mo.....	32 to 36 mo.....	36 to 42 mo.			
Drugs:							
“Hard drugs” (possession with intent to distrib- ute/sale) for profit (no prior conviction for sale of “hard drugs”).							
“Soft drugs”, possession with intent to distrib- ute/sale (over \$5,000).....							
Extortion.....							
Mann Act (force).....							
Rape (force).....							
GREATEST							
Aggravated felony (e.g. robbery, sexual act, aggra- vated assault)—weapon fired or personal injury.	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)						
Aircraft hijacking.....							
Drugs: “Hard drugs” (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of “hard drugs”).							
Explosives (detonation).....							
Kidnaping.....							
Willful homicide.....							

## NOTES

- These guidelines are predicated upon good institutional conduct and program performance.
- If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
- If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
- If an offense behavior involved multiple separate offenses, the severity level may be increased.
- If a continuance is to be given, allow 30 d (1 mo) for release program provision.
- “Hard drugs” include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.



## RULES AND REGULATIONS

## NARA

[Guidelines for decisionmaking; average total time served before release (including jail time)]

Offense characteristics: Severity of offense behavior (examples)	Offender characteristics: Parole programs (subject factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 2)
<b>LOW</b>				
Immigration law violations.....				
Minor theft (includes larceny and simple possession of stolen property less than \$1,000).....	6 to 12 mos.		12 to 18 mos.	
Walkaway.....				
<b>LOW MODERATE</b>				
Alcohol law violations.....				
Counterfeit currency (passing/possession less than \$1,000).....				
Drugs: Marijuana, simple possession (less than \$500).....				
Firearms Act, possession/purchase/sale (single weapon—not altered or machinegun).....	6 to 12 mos.		12 to 18 mos.	
Forgery/fraud (less than \$1,000).....				
Income tax evasion (less than \$10,000).....				
Selective Service Act violations.....				
Theft from mail (less than \$5,000).....				
<b>MODERATE</b>				
Bribery of public officials.....				
Counterfeit currency (passing/possession \$1,000 to \$19,999).....				
Drugs:				
"Hard drugs", possession by drug user (less than \$500).....				
Marijuana, possession with intent to distribute/sale (less than \$5,000).....				
"Soft drugs", possession (less than \$5,000).....				
"Soft drugs", sale (less than \$500).....				
Embezzlement (less than \$20,000).....				
Explosives, possession/transportation.....				
Firearms Act, possession/purchase/sale (altered weapon(s), machinegun(s), or multiple weapons).....	12 to 18 mos.		18 to 24 mos.	
Income tax evasion (\$10,000 to \$50,000).....				
Interstate transportation of stolen/forged securities (less than \$20,000).....				
Mailing threatening communications.....				
Misprison of felony.....				
Receiving stolen property with intent to resell (less than \$20,000).....				
Smuggler of aliens.....				
Theft/forgery/fraud (\$1,000 to \$19,999).....				
Theft of motor vehicle (not multiple theft or for resale).....				
<b>HIGH</b>				
Burglary or larceny (other than embezzlement) from bank or post office.....				
Counterfeit currency (passing/possession \$20,000 or more).....				
Counterfeiting (manufacturing).....				
Drugs:				
"Hard drugs" (possession with intent to distribute/sale) by drug user to support own habit only.....				
Marijuana, possession with intent to distribute/sale (\$5,000 or more).....	12 to 18 mos.		18 to 24 mos.	
"Soft drugs", possession with intent to distribute/sale (\$500 to \$5,000).....				
Embezzlement (\$20,000 to \$100,000).....				
Interstate transportation of stolen/forged securities (\$20,000 to \$100,000).....				
Mans Act (no force—commercial purposes).....				
Organized vehicle theft.....				
Receiving stolen property (\$20,000 to \$100,000).....				
Theft/forgery/fraud (\$20,000 to \$100,000).....				
<b>VERY HIGH</b>				
Robbery (weapon or threat).....				
Drugs:				
"Hard drugs" (possession with intent to distribute/sale) for profit (no prior conviction for sale of "hard drugs").....				
"Soft drugs", possession with intent to distribute/sale (over \$5,000).....	20 to 24 mos.		24 to 32 mos.	
Extortion.....				
Mans Act (force).....				
Sexual act (force).....				
<b>GREATEST</b>				
Aggravated felony (e.g. robbery, sexual act, aggravated assault)—weapon fired or personal injury.....				
Aircraft hijacking.....				
Drugs:				
"Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs").....				
Espionage.....				
Explosives (detonation).....				
Kidnapping.....				
Willful homicide.....				

(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)

## NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 d (1 mo.) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes.

# RULES AND REGULATIONS

5361

## SALIENT FACTOR SCORE

Case NAME.....	Register No.....
Item A.....	<input type="checkbox"/>
No prior convictions (adult or juvenile) = 2	
One or two prior convictions = 1	
Three or more prior convictions = 0	
Item B.....	<input type="checkbox"/>
No prior incarcerations (adult or juvenile) = 2	
One or two prior incarcerations = 1	
Three or more prior incarcerations = 0	
Item C.....	<input type="checkbox"/>
Age at first commitment (adult or juvenile) 18 years or older = 1	
Otherwise = 0	
Item D.....	<input type="checkbox"/>
Commitment offense did not involve auto theft = 1	
Otherwise = 0	
Item E.....	<input type="checkbox"/>
Never had parole revoked or been committed for a new offense while on parole = 1	
Otherwise = 0	
Item F.....	<input type="checkbox"/>
No history of heroin, cocaine, or barbiturate dependence = 1	
Otherwise = 0	
Item G.....	<input type="checkbox"/>
Has completed 12th grade or received GED = 1	
Otherwise = 0	
Item H.....	<input type="checkbox"/>
Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community = 1	
Otherwise = 0	
Item I.....	<input type="checkbox"/>
Release plan to live with spouse and/or children = 1	
Otherwise = 0	
Total score.....	<input type="checkbox"/>

Section 2.27 is revised to read as follows:

### § 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision on a form provided for this purpose. Attorneys, relatives, and other interested parties who wish to submit written information in support of a prisoner's appeal should send such information to the National Appellate Board Executive, United States Board of Parole, 320 First Street NW., Washington, D.C. 20537. Appeals of original jurisdiction cases shall be reviewed by the entire Board at its next quarterly meeting. A quorum of five members shall be required and all decisions shall be by majority vote. The Chairman shall vote on the decision only in the absence of a member. This appellate decision shall be final.

(b) Attorneys, relatives, or other interested parties who wish to speak for or against parole at such consideration must submit a written request to the Chairman of the Board stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the decision under § 2.17, this decision shall stand as the final decision of the Board.

(d) The bases for this appeal shall be the same as for a regional appeal as set forth in § 2.25(d).

Section 2.28 is revised to read as follows:

### § 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Director may on his own motion reopen a case at any time upon the receipt of new information of substantial significance and may then take any action authorized under the provisions and procedures of § 2.25. Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Director under the procedures of § 2.17.

Section 2.30 is revised to read as follows:

### § 2.30 Release on parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the prisoner.

(b) Parole release dates generally will not be set more than six months from the date of the parole hearing. Exceptions may be made in extraordinary situations or when necessary to permit an adequate period of residence in a Community Treatment Center. Such residence in a Community Treatment Center shall not generally exceed one hundred and twenty days. An effective date of parole shall not be set for a Saturday, Sunday, or a legal holiday.

(c) When an effective date of parole has been set by the Board, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for parole supervision. The appropriate Regional Director may, on his own motion, reconsider any case prior to release and may reopen and advance or retard a parole date. A parole grant may be retarded for up to one hundred and twenty

days without a hearing for development and approval of release plans.

Section 2.31 is revised to read as follows:

### § 2.31 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Board. If evidence comes to the attention of the Board that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Director may schedule a hearing to determine whether parole should be revoked or rescinded. Such a hearing shall be conducted in accordance with the procedure set out in § 2.37(b)(2).

Section 2.37 is revised to read as follows:

### § 2.37 Rescission of parole.

(a) When an effective date of parole has been set by the Board, release on that date shall be conditioned upon continued good conduct by the prisoner. If a prisoner has been granted parole and has subsequently been charged with institutional misconduct sufficient to become a matter of record, the Regional Director shall be advised promptly of such misconduct. The prisoner shall not be released until the institution has been notified that no change has been made in the Board's order to parole.

(1) Upon receipt of information that a prisoner has violated the rules of the institution, the Regional Director may retard the parole grant for up to sixty days without a hearing or may retard the parole grant and schedule the case for a rescission hearing. If the prisoner was confined in a federal prison at the time of the order retarding parole, the rescission hearing shall be scheduled for the next docket of parole hearings at the institution. If the prisoner was residing in a federal community treatment center or a state or local halfway house, the rescission hearing shall be scheduled for the first docket of parole hearings after return to a federal institution. When the prisoner is given written notice of the Board action regarding parole, he shall be given notice of the charges of misconduct to be considered at the rescission hearing. The purpose of the rescission hearing shall be to determine whether rescission of the parole grant is warranted. At the rescission hearing the prisoner may be represented by a person of his choice and may present documentary evidence.

(2) An institution discipline committee hearing conducted by the institution resulting in a finding that the prisoner has violated the rules of his confinement, may be relied upon by the Board as conclusive evidence of institutional misconduct.

(3) If the parole grant is rescinded, the prisoner shall be furnished a written statement of the findings of misconduct and the evidence relied upon.

(b)(1) Upon receipt of new information adverse to the prisoner regarding



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RODNEY R. HAYMES, individually and on  
behalf of all other inmates similarly  
situated,

Plaintiff-Appellee,

-against-

PAUL J. REGAN, Chairman of New York  
State Board of Parole; Parole Board  
Panel of 7/28/74,

Defendants-Appellants.

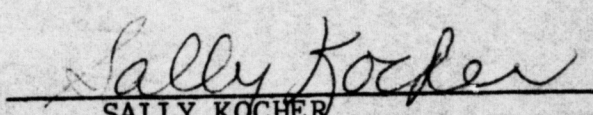
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AFFIDAVIT OF  
SERVICE


No. 75-2096

Sally Kocher, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and  
reside at River Road, Tillson, New York. On September 26, 1975, I served  
a true copy of the annexed Brief for Plaintiff-Appellee in the following  
manner: by mailing the same in a sealed envelope, with postage prepaid  
thereon, in a post-office or official depository of the U.S. Postal Service  
within the State of New York, addressed to the last known address of the  
addressee as indicated below: David Birch, Deputy Assistant Attorney  
General, Two World Trade Center, New York, New York.

  
SALLY KOCHER

Sworn to before me on September 26, 1975

  
JANE ELLEN BLOOM  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN DUTCHES COUNTY  
COMMISSION EXPIRES MARCH 26, 1976